

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
(Ameritech Illinois) and Ameritech	:	
Advanced Data Services of Illinois,	:	
Inc.	:	01-0781
	:	
Joint Petition for Approval of	:	
Negotiated Interconnection	:	
Agreement dated October 5, 2001,	:	
pursuant to 47 U.S.C. §252.	:	

ORDER

By the Commission:

Procedural History

In this proceeding, Illinois Bell Telephone Company ("Ameritech") and Ameritech Advanced Data Services of Illinois, Inc. ("AADS") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of a negotiated interconnection agreement ("Interconnection Agreement" or "Agreement") dated October 5, 2001, pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq. A copy of the Agreement was filed with the joint petition. Also attached to the joint petition is a verified statement in support thereof from Jack Firth, "Director-Negotiations for SBC Telecommunications, Inc. Industry Markets."

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by respective counsel on behalf of Ameritech and the Commission Staff ("Staff"). The Verified Statement of Torsten Clausen, a Policy Analyst in the Commission's Telecommunication's Division, was admitted into the record. In his Verified Statement, Mr. Clausen recommended approval of the Agreement, subject to certain conditions regarding implementation. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered.

Section 252 of the Telecommunications Act of 1996

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Purpose and Terms of the Interconnection Agreement

The Interconnection Agreement between Ameritech and AADS establishes financial and operational terms for the interconnection of their respective telecommunications networks and facilities based on unbundled access to Ameritech's network elements. The Agreement is intended to be a comprehensive agreement that tailors the interconnection and service arrangements previously approved by the Commission for competition to meet the individual needs of the parties and thereby promote competition for data and transport services. Among other things, the Agreement addresses such issues as unbundled access to Ameritech's network elements, including Ameritech's operations support system functions; physical collocation; number portability; resale; and a variety of other business relationships. The Agreement will expire on December 24, 2002, but will continue to be in effect after that date unless either party provides notice of termination.

Staff Recommendation

Staff reviewed the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position is that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and Ameritech for termination on each other's networks and if it imposes costs on Ameritech that are no higher than costs imposed by AADS. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. Staff also states that Section 252 (i) of the Act allows a similarly situated carrier to enter into essentially the same agreement.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement on the basis of economic efficiency, equity, past Commission orders and state and federal law. Staff asserts that all the services in the Agreement are priced at or above their respective long run service incremental costs ("LRSICs"), and thus should be considered economically efficient. Staff concluded, and the Commission agrees, that implementation of the Agreement would be consistent with the public interest.

Staff concluded that the Agreement should be approved, subject to Staff's recommendations regarding implementation. With respect to implementation of the Agreement, Staff recommended that the Commission require Ameritech to, within five days from the date the Agreement is approved, modify its tariffs to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of Ameritech's tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require Ameritech to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's

recommendations regarding implementation of the Agreement are reasonable and should be adopted.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Ameritech and AADS are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which provide telecommunications services as defined in Section 13-203 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) the Agreement does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (5) in order to assure that the implementation of the Agreement is in the public interest, Ameritech should implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition; the Chief Clerk should place the Agreement on the Commission's web site under "Interconnection Agreements";
- (6) within five days of the entry of this Order, Ameritech should modify its tariffs to reference the Agreement in the manner recommended by Staff and described in the prefatory portion of this Order above;
- (7) the Agreement should be approved as hereinafter set forth;
- (8) approval of this Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Agreement between Ameritech and AADS is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Ameritech shall comply with Findings (5) and (6) hereinabove.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 15th day of January, 2002.

Chairman